

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
July 26, 2016

v

JOSEPH EMANUEL FONVILLE,  
Defendant-Appellant.

No. 327471  
Washtenaw Circuit Court  
LC No. 14-000514-FH

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Before: STEPHENS, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Defendant entered a plea of guilty to a charge of first-degree retail fraud, MCL 750.356c. The trial court sentenced defendant to serve 14 months' to 5 years' imprisonment, and to pay restitution in the amount of \$1,030.84. Defendant appeals by delayed leave granted,<sup>1</sup> challenging the validity of the restitution order. We vacate the order of restitution and remand this case to the trial court for further proceedings.

In connection with this case, defendant admitted to stealing merchandise from a home improvement store.<sup>2</sup> The presentence investigation report (PSIR) recommended that the court order defendant to pay restitution in the amount of \$1,030.84. At sentencing, defendant objected to that recommendation on the ground that the merchandise in question was ultimately returned. Plaintiff had not produced a witness who could have contested defendant's assertion, but stated that the prosecution would submit evidence supporting the requested restitution amount. The trial court ordered that defendant "pay restitution in an amount to be determined, within a period of 90 days . . . ." Four months later, the Department of Corrections submitted a "case report" to the trial court stating that restitution had been determined in the amount of \$1,030.84 and requesting that the judgment of sentence be amended to reflect that restitution amount. The trial

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<sup>1</sup> *People v Fonville*, unpublished order of the Court of Appeals, issued July 1, 2015 (Docket No. 327471).

<sup>2</sup> The proceedings below involved additional theft-related prosecutions which are not relevant to the resolution of this appeal.

court then entered an amended judgment of sentence specifying that amount in the restitution order.

On appeal, defendant asserts that the trial court erred in ordering restitution without holding a hearing to determine the amount. Plaintiff confesses error in this regard.

Victims of crime are entitled to restitution pursuant to Const 1963, art 1, § 24. *In re Lampart*, 306 Mich App 226, 232; 856 NW2d 192 (2014). The Crime Victim’s Rights Act, MCL 780.751, *et seq.*, requires “trial courts to order convicted defendants to ‘ ‘make full restitution to any victim of the defendant’s course of conduct that gives rise to the conviction . . . .’ ’ ” *Id.* at 233, quoting *People v Fawaz*, 299 Mich App 55, 65; 829 NW2d 259 (2012), quoting MCL 780.766(2).

When restitution is at issue, MCL 780.767 is implicated. Compliance with MCL 780.767(1) requires “a determination of the amount of the victim’s loss . . . .” *People v Grant*, 455 Mich 221, 233; 565 NW2d 389 (1997). MCL 780.767(4) states that “[a]ny dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney.” Accordingly, once it becomes “apparent to the court that the parties disputed the amount of restitution that was proper, . . . the court is obligated to conduct a hearing to determine . . . the amount of loss sustained by the victim.” *People v Avignone*, 198 Mich App 419, 424; 499 NW2d 376 (1993).

In this case, the prosecution initially suggested \$1,030.84 in restitution on the basis of the value of the property that defendant stole from the home improvement store, but the parties agree that defendant raised a sufficient objection to the proposed amount of loss at sentencing to trigger the trial court’s obligation to hold a hearing to determine the amount. See MCL 780.767(4); *Grant*, 455 Mich at 243. Because there was no such hearing, the record is devoid of evidentiary support for the restitution award.

The restitution order is vacated and the case is remanded to the trial court for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens  
/s/ Deborah A. Servitto  
/s/ Elizabeth L. Gleicher